

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – OCTOBER 20, 2004**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:30 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Sellers, Tate and Mayor/Chairman Kennedy
Absent: Council/Agency Member Chang

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

2.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Legal Authority: Government Code 54957
Public Employee Performance Evaluation: City Manager
Attendees: City Council, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:32 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:01 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced that no reportable action was taken in closed session and that should City Manager/Executive Director Tewes arrive at the conclusion of the regular/special meeting agenda, the Council would reconvene to closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Ray Jimenez led the Pledge of Allegiance.

PROCLAMATIONS

Mayor Kennedy presented Ray Jimenez and Roger Beaulieu with a proclamation, recognizing the Teachers Aid Coalition for their efforts in raising funds and donations to assist Morgan Hill Unified School District Teachers with classroom supplies.

CITY COUNCIL REPORT

Mayor Kennedy indicated that he would not be presenting a report this evening.

CITY MANAGER REPORT

Acting City Manager Ashcraft stated that he did not have a City Manager's report to present.

CITY ATTORNEY REPORT

City Attorney Leichter stated that the monthly Litigation Summary was distributed to the Council this evening and that copies of the Summary have been made available for the public.

OTHER REPORTS

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy requested that items 2 and 3 be removed from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **approved** Consent Calendar items 1, 4-11 as follows:*

1. **APPROVE FINAL MAP FOR COYOTE ESTATES PHASE IX (TRACT 9577)**
***Action:** **Authorized** the Recordation of the Map Following Recordation of the Development Improvement Agreement.*
 4. **MEMBERSHIP IN INDEPENDENT CITIES LEASE FINANCE AUTHORITY (ICLFA)**
***Action(s):** **Adopted** Resolution No. 5850, Authorizing the City Manager to do Everything Necessary to Execute the Associate Membership Agreement with ICLFA.*
 5. **APPOINTMENT TO THE SANTA CLARA COUNTY HOUSING & COMMUNITY DEVELOPMENT CITIZEN ADVISORY COMMISSION**
***Actions:** 1) **Approved** the Mayor's Appointment of Laura Brunton as the City Council's Citizen Representative to the Santa Clara County Housing & Community Development's Citizen Advisory Commission; and 2) **Directed** the City Clerk's Office to Notify the Santa Clara County Housing & Community Development Department of Said Appointment.*
 6. **APPOINT ERIC F. GOULD TO FILL A VACANCY ON THE MOBILE HOME RENT COMMISSION**
***Action:** **Approved** Mayor's Appointment of Eric F. Gould to Fill a Citizen at Large Vacancy on the Mobile Home Rent Commission, with Term Ending June 1, 2005.*
 7. **CONSIDER REQUEST FROM THE MORGAN HILL KIWANIS CLUB TO WAIVE/FUND SPECIAL EVENT PERMIT FEES**
***Actions:** **Agreed** to Pay the \$125 Special Events Permit Fee for the Holiday Parade.*
- Mayor Kennedy thanked the Kiwanis for all their hard work and for the support/events that they provide for the Friday Night Series, Holiday Parade and the decorations for the downtown. He stated that he was happy to support this particular action.
8. **ESTABLISH NEW CLASSIFICATION AND SALARY RANGE FOR NEW POSITION OF MULTI-SERVICE OFFICER (MSO)**
***Action:** **Adopted** the New Job Description and Salary Range for the Position of Multi-Service Officer (MSO) in the Police Department.*
 9. **ADOPT ORDINANCE NO. 1699, NEW SERIES**
Actions:** **Waived** the Reading, and **Adopted** Ordinance No. 1699, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-04-03: DEWITT-LATALA FOR APPLICATION MMP-03-06: DEWITT-LATALA. (APN 773-08-012).

10. ADOPT ORDINANCE NO. 1700, NEW SERIES

Actions: *Waived the Reading, and Adopted Ordinance No. 1700, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL EXTENDING AND MODIFYING ORDINANCE NO. 1641, NEW SERIES, ALLOWING MODIFIED SETBACK DWELLINGS IN RESIDENTIAL PROJECTS DUE TO CONSTRUCTION LIABILITY INSURANCE ISSUES SURROUNDING OWNERSHIP ATTACHED HOUSING.***

11. SPECIAL CITY COUNCIL MEETING MINUTES OF OCTOBER 6, 2004

Action: *Approved the Minutes as Written.*

2. PUBLIC WORKS LANDSCAPE MAINTENANCE AGREEMENT FOR FISCAL YEAR 2004-2006

Mayor Kennedy stated that in reading the staff report, the City cancelled the previous agreement that had been made with the low bid contractor and that staff is now recommending that the City retain the services of the second low bidder. He inquired as to the reason the primary low bidder was unsuccessful.

Acting City Manager/Public Works Director Ashcraft stated that the work of the primary low bidder was not satisfactory in performing within the time schedule. Staff had spent 1-1.5 months trying to work with the landscaper to perform satisfactorily and that the level of effort did not meet the City's minimum standard. He stated that by mutual agreement, the contract was cancelled.

Actions: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent: 1) Approved the New Maintenance Agreement for City-Wide Landscape Services; and 2) Authorized the City Manager to Execute the Agreements on Behalf of the City.*

3. APPROVAL OF REIMBURSEMENT AGREEMENT WITH CHARLES WESTON & LESLIE MILES FOR MODIFYING THE CURB INLET ON DEPOT STREET AT EAST MAIN AVENUE (ST. CATHERINE'S DAY WORKER CENTER)

Mayor Kennedy noted that it is stated in the staff report that the funding source is from Measure C, capital improvement project (CIP) funds. He inquired as to the projects Measure C CIP funds can be used for.

Acting City Manager Ashcraft informed the Council that one of the many scoring criterion in Measure C allows developers to receive extra points for the donation of funds for unspecified CIP projects. He indicated that CIP projects include the construction of driveways, curb, gutter and sidewalks, street paving, water and sewer. He said that sometimes the criterion of Measure C is such that it is specific to a certain project. Sometimes, funds will be generated for storm drain projects. However, there are other funds that are generated for non designated CIP projects. He said that it is being recommended that

Measure C funds be used for the Dayworker Center project. The specific project is the reconstruction of the curb return for the Dayworker Center.

Actions: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent: 1) **Approved** an Appropriation of \$6,370 from the Current Year Unappropriated Measure C - Capital Improvement Project Fund Balance for Reimbursement of Relocating and Raising the Curb Inlet on Depot Street at East Main Avenue; and 2) **Authorized** the City Manager to Execute the Reimbursement Agreement on Behalf of the City, Subject to Review and Approval by the City Attorney.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Tate and seconded by Mayor Pro Tempore/Vice-chairman Sellers, the City Council, on a 4-0 vote with Council/Agency Member Chang absent, **approved** Consent Calendar item 12 as follows:*

12. SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF OCTOBER 6, 2004

Action: ***Approved** the Minutes as Written.*

City Council Action

OTHER BUSINESS:

13. SAN MARTIN LOCAL DECISION-MAKING ACTIVITIES

Sylvia Hamilton explained the process undertaken by the San Martin Neighborhood Alliance (Alliance) that led to the decision to incorporate San Martin. She stated that in looking into incorporation, financing is a serious concern that needs to be reviewed carefully. The Alliance found a financial feasibility consultant that was highly respected who performed a scope of work and addressed the cost to the community. She indicated that members of the Alliance contributed \$25,000 to fund the initial financial feasibility study. In July 2003, EPS, the planning consultant firm hired by the Alliance, attended a town hall meeting. She indicated that San Martin residents, Mayors for both neighboring cities and a Santa Clara County Board of Supervisor representative attended the town hall meeting. EPS presented their report, indicating that funds existed to provide the same level of services to San Martin. The Alliance commenced with a very extensive community outreach program and that they listened to questions raised by the community. The Alliance learned a great deal from the neighborhood meetings. She indicated that the following comments/concerns were raised: 1) Fear that taxes would go up with no knowledge where the money would come from (residents did not realize that there would be revenue sharing possibilities). 2) Afraid that incorporation would result in an urbanized city (citizens do not want this). 3) They would like more control over the destiny of their community. 4) Want to maintain a residential rural atmosphere. 5) Maintain positive control growth

and low density. 6) Support businesses but to be local serving to the tri community area. 7) Maintain the same level of services. 8) They do not want municipal water, sewer, street lights, sidewalk, etc. in residential areas. 9) They want a long term plan that reflects their vision and harmony that is rural residential in nature. 10) Interested in being self governing. 11) Want to be more than advisory on land use issues. 12) They want to set, regulate and implement policies. 13) They want locally elected, politically accountable town council as they would be more accessible, visible, and responsive.

Ms. Hamilton indicated that the Alliance has read through the newest revised State document regarding incorporations. The document talks about what a city must have in order to incorporate (e.g., name, distinct geographic area, a variety of land uses, positive relationships with bordering cities, community pride and spirit). She felt that San Martin satisfies the requirements for incorporation. The Alliance believes that the residents of San Martin have a right to decide whether they want to be self governing. She informed the Council that the Alliance would continue their community outreach program on a regular basis. The Alliance has dealt with the tenants of incorporation, indicating that there is ongoing work taking place with LAFCo. The Alliance has prepared the notice of intent to circulate a petition. Both of these documents are in draft form and are being reviewed by LAFCo. The Alliance has prepared a draft boundary map and has worked with the Mayors and the City Managers of both bordering cities to determine if there were any red flags associated with the map. She indicated that everyone seemed to be happy with the map that was prepared. She stated that the Alliance has to finalize its application to LAFCo. Should LAFCo approve the documents, the next step would be for LAFCo and the Alliance to work together to hire a comprehensive fiscal analysis consultant. LAFCo will make their determination upon completion of their review of all documents from the various agencies. Should LAFCo support the documentation, incorporation would go to the vote of community residents at the next general election. She stated that the Alliance believes that incorporation is in the best interest of all south county communities. She indicated that the Alliance is requesting that the Council provide a resolution in support, requesting that LAFCo move forward with the incorporation process.

Council Member Tate indicated that he was not able to read the map provided by the Alliance. He did not know where the San Martin boundary would be relative to the Morgan Hill City Limits.

Ms. Hamilton indicated that it is proposed to have the San Martin boundary on the City's sphere of influence line for Morgan Hill. She stated that the Alliance would be happy to meet with planning staff and the City Manager to ensure that the City Limit line is adjusted in a manner that works best for all concerned. She indicated that there would still be unincorporated County areas between Morgan Hill and the proposed San Martin limit line.

Mayor Pro Tempore Sellers stated that incorporation would take taxes/revenue away from the County. He inquired whether this has been an issue with the County or whether they have been cooperative.

Ms. Hamilton responded that the County has been very helpful. She said that one of the reasons there would not be a conflict is because their revenues would be decreased equal to the services that they were providing (revenue neutrality).

Council Member Carr noted that Ms. Hamilton commented several times about the level of service and the fact that San Martin residents do not want to change their current level of service.

Ms. Hamilton indicated that the residents of San Martin are happy with being a rural community and would like to encourage agricultural and local serving businesses that would support agricultural as well as the daily uses of the community. San Martin residents are not interested in high density. She stated that in attendance this evening were other members of the San Martin Incorporation Subcommittee. She informed the Council that a simple majority vote is needed to incorporate San Martin, indicating that 25% of the registered voters need to sign the petition of incorporation in order to have it considered by LAFCo.

Mayor Kennedy opened the floor to public comment.

Paul Marshall, vice-president of the South County Airport Pilots Association (Association), stated that it is exciting to see the San Martin Neighborhood Alliance go as far as it has to create a new village and going through all the steps to organize. He indicated that approximately one-third of the 80 members who fly out of the South County Airport reside in Morgan Hill. He stated that the Association noticed yesterday in the newspaper that the San Martin group would be speaking before the Council this evening. As pilots, they are pro airports and are supporting the County in its Airport Master Plan for the next 20 years. He indicated that the next area of airport work is to install a runway extension. He stated that the Association supports the runway extension while the Alliance opposes the extension. He indicated that last year, the Alliance filed a suit seeking an injunction against the hanger project. They eventually dropped the suit but are now focusing in blocking the runway expansion. He indicated that the County has one massive airport for public use, San Jose International Airport. The County also has three very small airports that are good for single engine propelled aircrafts. He noted that the County does not have a mid sized airport for public use. When the County looks ahead 20 years, they see that this will be a problem as the San Jose airport gets full. He indicated that there are places like Hollister and Watsonville who have larger runways that can support larger planes commonly used by businesses. He stated that the County is trying to increase the runway to reach 5,000 feet. He felt that the airport would remain a small regional airport, smaller than Hollister, with less asphalt than Watsonville has in its airport. He stated that the Association would like San Martin to succeed and to have the City of Morgan Hill support the Alliance in their efforts to incorporate. However, he felt that it would be advisable for the City of Morgan Hill to protect its interest by obtaining a binding commitment from the Alliance to support the County's Airport Master Plan as a part of the City's support.

Jim MacKnight, resident of Morgan Hill and a member of the South County Airport and Pilots Association, stated that the Association supports San Martin's incorporation. However, the Association requests that there be a binding agreement in order to move forward with the Santa Clara County Airport Master Plan that will handle growth for the next 20 years in South County. He indicated that the 100 hangers being installed were previously opposed by the Alliance, noting that the additional hangers included an increase in fire protection. He requested that the Council consider these factors when it endorses incorporation. He recommended that the Council protect the City's interest in the reasonable growth of the airport.

Steve Miller deferred his time to Mr. Marshall.

Mr. Marshall indicated that the airport is good for the City of Morgan Hill for a variety of reason. He stated that the Department of Forestry was able to use the airport facility to fight a fire in the hills a few years ago. He stated that people who are involved with lifeline medical services also use the airport as a staging place to transfer individuals. It is convenient to have an airport close to home for individuals who fly. It also affords the ability for retraining. He felt that expansion of the airport is a good thing as it takes the runway from 3,000 feet to 5,000 feet. Big business jets would not be able to use this size of a runway. He said that modification to aircrafts result in them being quieter. Therefore, you do not have nearly the noise problems that you had 20-30 years ago. He felt that it was important to have the best possible attraction to bring the right economic base to the area. A small airport that can serve business needs will promote economic growth in the area. He felt that communities need to think carefully about making the community an attractive place for businesses to situate. He stated that there is a very strong history with the San Martin Neighborhood Alliance of being in conflict with the airport. He felt that the airport has provided good benefits to the community. He felt that the Council may be the individuals who can talk to the Alliance to have them think about the airport's benefits.

Mayor Kennedy said that one of the proposals in the Airport Master Plan is to allow jets with increased weight. He felt that this was a concern to the residents of San Martin, Morgan Hill and Gilroy should large heavier jets be allowed to use the airport (noise concern).

Mr. Marshall stated that the airport could implement noise limits. He said that there are three different noise levels. He said that it was his belief that the County calls for the expansion that would accommodate a midsized business jet aircraft and that the airport would not be suitable for large jets that load up to travel long distances.

Larry Fernandez indicated that his points have already been raised.

No further comments were offered.

Mayor Pro Tempore Sellers stated that in hearing comments this evening; he agreed that the future of the airport is of significant concern to Morgan Hill as it is to Gilroy and the entire region. However, he felt that it might be premature in the way discussions were developing and in what the San Martin Group is requesting of the City Council this evening. He recommended that the San Martin Airport item be one that the Council sits down and resolves with the two groups. In listening to Ms. Hamilton and the steps remaining, he felt that San Martin was in a relative early stage of working toward incorporation. He recommended that the resolution states that the Council looks forward in working with San Martin residents and mutually resolving issues such as the airport. He felt that this would be a way to reference discussions regarding the San Martin airport.

Council Member Tate stated that he appreciated the issue of the airport being raised this evening. He felt that the reason that the San Martin residents want to incorporate is to increase their input into the land use decision making process. He noted that the Council is being faced with a land use decision. He stated that this is an airport that Morgan Hill wants to have access to. He noted that the airport is located in San Martin and not in Morgan Hill. He stated his support of Mayor Pro Tempore Sellers' desire to work with the San Martin residents. However, he did not believe that the Council should force

a land use decision on a town that is just getting started because they want to make their own land use decisions.

Mayor Pro Tempore Sellers felt that there were a variety of issues that warrant further discussion such as emergency, police and fire services. He said that San Martin will be making their own decision. However, if there are items that impact both communities, this may be a way to ensure that the City has input as the airport will impact the Morgan Hill community.

Council Member Carr felt that the City needs to take a step back and that before talking about specifics such as the airport and other items; he would like to ask staff to investigate whether there would be any impacts to Morgan Hill. He felt that it was exciting that a community is coming together in order to take some charge of its future. However, as a Council Member for Morgan Hill, he has to ask City staff to take a look at the report and the actions being proposed to determine any affects to Morgan Hill. He indicated that this item would be discussed at the South County Joint Planning Advisory Committee in the near future and felt that this Committee will also want to review any impacts associated with incorporation. He stated that he would be willing to have a resolution in support of incorporation returning to the Council, but felt that it was important to have the discussion of staff's findings of any impacts to Morgan Hill in order to find ways to address the impacts as they present themselves.

Mayor Kennedy indicated that he serves on the Airport Land Use Commission which reviews land use issues surrounding airports. He stated that Nathan Bennich is his proxy on this Commission and that he has been actively working with the San Martin Neighborhood Alliance to try and resolve issues that may come up with respect to the airport. He said that the Council always tries to find a win-win solution that benefits all parties (e.g., pilots, community of San Martin, and Cities of Morgan Hill and Gilroy). He noted that the action being recommended is that the Council direct staff to draft a resolution for Council consideration. He recommended that staff look at any other issues that might be of concern to the City and bring those back as well, giving staff time to do so.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Chang absent: **Directed** that: 1) staff return with a resolution in support of San Martin Incorporation; and 2) staff to investigate any issues that may be of concern to the City of Morgan Hill (e.g., airport, public safety, refuse station).*

14. CONSIDER PROCEDURES TO RESOLVE TIE VOTE(S)

City Clerk Torrez presented the staff report, informing the Council that the City does not have in place an ordinance or a resolution that authorizes a special election to be held in order to resolve a tie vote. If the Council does not adopt an instrument to take a tie vote to a special election by November 1, 2004, the tie vote would be decided by draw.

City Attorney Leichter informed the Council that the procedure for drawing by lot is that the candidates involved in a tie would be summoned to Sacramento and that the Secretary of State conducts the lot drawing to determine the winner.

Mayor Kennedy noted that the staff report indicates that the Santa Clara County Registrar of Voters has indicated that a runoff election could cost up to \$177,000.

City Clerk Torrez indicated that it is premature for the Registrar of Voters office to give the City an actual cost for a special election as it is not known if a special election could be consolidated with any other elections that may occur throughout the County. She stated that in talking with a Registrar of Voters staff member, it was indicated that in the past eight years they have not had a situation where they had to hold a runoff election to resolve a tie vote.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Council Member Tate said that another factor to consider besides the expense is the delay in seating an individual for a period of time. These factors influence his decision on this matter.

City Attorney Leichter informed the Council that the Election Code specifies that a runoff election would have to be held between 40 and 125 days after the election.

Mayor Pro Tempore Sellers said that understanding the potential cost and the exceedingly unlikely event that a tie would occur, the Council would be making a policy statement. He felt that the Council's policy statement should be that the City would conduct a runoff election in the event of a tie vote. He noted that several years ago the City had 10 individuals running for Council and that the winners ended up close in the number of votes they attained (e.g., 20%, 19%, 18%, etc.). He felt that there are specific differences between candidates and that a runoff election would give an individual a good opportunity to make a different statement. He felt that you may end up having up to 80% of the citizens who did not vote for an individual who would end up getting elected. He felt that 80% of voters should be given another opportunity to vote as you may have two candidates who would have very despaired views on items while having a majority of individuals who would want to weigh in. If he thought that there was a remote likelihood of a tie vote taking place, he might be more inclined toward the financial argument. However, it was his belief that this would be a policy statement. It would be his policy statement that the City gives voters a second chance to vote.

Mayor Kennedy stated that he agreed with Mayor Pro Tempore Sellers' comments about resolving a tie vote by holding a special runoff election as a policy statement. He felt that the importance of the decision of who is elected to the Council or Mayor seats should not be left up to a lottery but left up to the vote of the public. He said that although the cost would be high, it would be highly unlikely that a tie vote would occur.

Council Member Carr stated that he had not given thought to Mayor Pro Tempore Sellers comments but had given thought of a tie in the instance of two candidates running against each other and the City holding the same election over again. He noted that the resolution states that a runoff election would be held to resolve a tie vote. He inquired whether this was clear enough to mean that only those candidates that are tied and have the highest number of votes would be involved in a runoff election so that in the case of 10 candidates running for mayor or city council, the other eight would not be included in the special runoff election. He felt that a clarification would make a difference.

City Attorney Leichter stated that it was her belief that the resolution could stand some clarification in light of Council Member Carr's comments. The resolution can be clarified to state that the runoff election would be for an open seat.

Mayor Kennedy referred to the section of the resolution that reads "Whereas, Section 15651(b) of the Elections Code of the State of California authorizes the City Council, by majority vote, to adopt provisions to require the conduct of a special runoff election to resolve a tie vote involving those candidates that have received an equal number of votes and the highest number of votes for an elected office." He felt that this section limits a runoff election to the highest vote getting candidates.

City Attorney Leichter stated that it could be that the City would have one candidate that fills one seat and that there would be a tie vote for the second council seat. In which case, the resolution would not apply. She requested the opportunity to clarify this section. She felt that it should be the highest number of votes for an open seat. She indicated that the resolution could be amended verbally this evening.

City Clerk Torrez clarified that the Council has to take action on the resolution by November 1 in order to be able to conduct a special runoff election in the event of a tie vote. She indicated that staff could return to the Council on October 27 with an amended resolution.

Mayor Pro Tempore Sellers stated that the Council could request that staff return with an amended resolution on the October 27 Council meeting for adoption should there be concurrence.

Council Member Tate felt that a special election is costly and that it would be more fiscally responsible to save money and resolve a tie vote by lot.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Mayor Kennedy, the Council **directed** staff to return with a Resolution on October 27, 2004 that would allow the conduct of a special runoff election in the event of a tie vote, with the amendments referenced by the City Attorney.*

Council Member Carr agreed that the fiscally responsible position would be to resolve a tie vote by the flip of a coin. This was his position until Mayor Pro Tempore Sellers brought up a situation that he had not thought of. If candidates are tied with only 15% of the vote, it really is not the citizens who will decide who will serve the elected term with the flip of a coin. Therefore, he felt that the voters should be given the opportunity to resolve the tie. He acknowledged that the possibility of a tie vote would be slim.

Vote: *The motion carried as follows: AYES: Carr, Kennedy, Sellers; NOES: Tate; ABSTAIN: None; ABSENT: Chang.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Council Member Carr stated that he has been reading a lot in the newspaper, recently, about the potential of an Indian casino and/or Indian gaming. It was his understanding that the Mayor has been invited to attend a meeting. Other than what he has read in the newspaper, he indicated that he knows nothing about what is taking place. He recommended that this item be brought before the Council as he did not know whether the City of Morgan Hill should take a position and what the position should be, if any.

RECONVENE TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to closed session at 7:53 p.m. in order to conduct a brief meeting with the City Manager.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 8:09 p.m.

CLOSED SESSION ANNOUNCEMENT

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 8:10 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY